



March 1, 1999

Mr. S. Stephen Hilmy
Gary, Thomasson, Hall & Marks
210 S. Carancahua
Corpus Christi, Texas 78403

OR99-0591

Dear Mr. Hilmy:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122375.

The Flour Bluff Independent School District (the "district"), which you represent, received a request for all letters and materials written by Mr. Justin Holloway to the district. You indicate that Mr. Holloway is a "parent of a current or former student" of the district. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

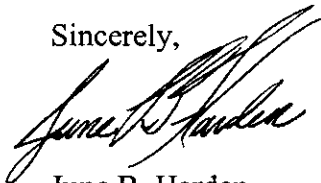
Initially, you assert that the records contained in Attachment B are education records protected from disclosure to the public by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. The district may withhold from disclosure information that is protected by FERPA without the necessity of requesting a decision from this office. Open Records Decision No. 634 (1995). However, as you have sought a decision from this office, we will address your arguments against disclosure. Section 552.026 of the Government Code excepts from disclosure educational records unless released in conformity with FERPA. FERPA provides that federal funding shall not be made available to "any educational agency or institution which has a policy or practice of permitting the release of educational records" of students without the written consent of the parents of a minor student. 20 U.S.C. § 1232g(b)(1). Education records are those records that "contain information directly related to a student and are maintained by an educational agency or institution." *Id.* § 1232g(a)(4)(A). Generally, only information which would serve to identify the student is excepted from disclosure under FERPA. Open Records Decision No 332 at 3 (1982).

After careful review, we agree that most of the information you have marked is excepted from disclosure under FERPA and must be withheld. We have marked the information that does not identify a student and must be released. Since we do not believe that all the submitted documents are education records covered by FERPA, we will address your arguments under section 552.101.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). We do not believe, in this instance, that the submitted documents are excepted from disclosure under section 552.101 by the informer's privilege. *Id.*; Open Records Decision Nos. 515 at 3 (1988) (informer's privilege applies provided that the subject of the information does not already know the informer's identity), 208 at 1-2 (1978). Furthermore, information is not excepted from disclosure merely because the individual furnishing such information did so with the expectation that access to the information would be restricted. Accordingly, the remaining documents must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden", with a stylized, flowing script.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 122375

Enclosures: Submitted documents

cc: Mr. Ron Fisher
15978 Punta Espada
Corpus Christi, Texas 78418
(w/o enclosures)